IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4347 OF 2005

Kanchan Brijesh Mishra & Anr. ... Petitioners

V/s.

Gulabi Mahabal Tiwari & Anr. ... Respondents

Mr.R.O. Pathak for Petitioners
Mr.P.K. Dhakephalkar a/w B.R. Dalal for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 5, 2005**

P.C.:

. The Petition has been filed against the order directing the Petitioners, who are obstructionists, to hand over vacant and peaceful possession of the suit premises. A suit was filed by Respondent No.1 in 1990 against Respondent No.2, his tenant for ejectment on the ground that Respondent No.2 had defaulted in payment of rent. The suit was decreed in 1995 in favour of the Plaintiff i.e., Respondent No.1. At the time when the decree was to be executed, it was found that the Petitioners i.e., the obstructionists, were in possession of the suit premises. Therefore, the Obstructionist Notice was taken out by the Petitioners claiming their right to be in possession.

2. The main contention of the Petitioners was that

since the land on which the chawl is constructed, is owned by the State of Maharashtra. Respondent No.1 had no right to claim that he was the landlord of the suit premises and, therefore, the decree could not be executed.

3. Both the Courts below have given a finding that the suit premises are constructed only by Respondent No.1, albeit on land belonging to the Government, Respondent No.1 was the landlord of the suit premises. Respondent No.1 was, therefore, entitled to collect rent from the original defendant i.e., Respondent No.2. The Petitioners being the obstructionists have, therefore, been directed to hand over vacant and peaceful possession of the suit premises.

4. I see no infirmity in the orders of the Courts below. The suit filed by Respondent No.1 against the State of Maharashtra before the City Civil Court i.e., S.C. Suit No.17 of 1988 has been dismissed on 16.1.1993. The First Appeal filed therefrom in this Court has been admitted by this Court. The fate of the suit land will, therefore, be decided in that appeal. However, there is no dispute that Respondent No.1 has constructed the suit premises and, therefore, he is rightly considered the landlord as against the original

defendant. Petition dismissed.